

TERMS AND CONDITIONS

1 General

1.1 These Terms and Conditions ("T&C") are between the Manager and the Customer and apply to the Booking made by the Customer.

1.2 By making a Booking (directly and or indirectly through a third party), the Customer agrees to the T&C on behalf of all persons included in the Booking. Where the Customer constitutes more than one person, each person shall be jointly and severally bound by the T&C.

2 Interpretation

"Accommodation" means the accommodation available at the Mackerel Islands.

"Activities" means the use of the facilities and equipment at the Mackerel Islands for the purpose of tours, events, sport, enjoyment, relaxation, accommodation or leisure of any description whatsoever and any incidental activities thereto.

"Booking" means the act of reserving the Accommodation, Equipment and or the Activities.

"Booking Total" means the total amount payable to the Manager by the Customer for the booking of the Accommodation, Equipment and or the Activities, including any meals, additional items, optional extras or package inclusions, unless otherwise specified.

"Customer" "Guest" "You" or "Your" means the person or persons staying or intending to stay at the Accommodation, hiring or intending to hire the Equipment, and or participating or intending to participate in the Activities, and includes any minors accompanying the Customer.

"Equipment" means any equipment that the Manager makes available for hire.

"Force Majeure Event" means any act of God, war, terrorism, fire, flood, cyclone or any other extreme weather conditions, loss of power, epidemics or pandemics (including COVID-19), industrial disputes, slow-downs or other strike activities, riots or civil unrest, acts of government, semi government or other authorities, state and or federal government restrictions, including but not limited to restrictions on travel and gatherings, inability to obtain any necessary licence or consent and delays caused by sub-contractors, suppliers or other third parties (including

telecommunications carriers), material shortages or other disruption to the Manager's services beyond its control.

"Group Bookings" means a Booking made for 20 or more persons, or 10 or more Accommodation sites.

"Mackerel Islands" means Thevenard Island and Direction Island located off the coast of Onslow, Western Australia, and includes all associated facilities licenced, owned and or operated by the Manager (including but not limited to the ferry service and car parking at Onslow).

"Manager" "We" "Us" or "Our" means Mackerel Islands Pty Ltd (ACN 008 728 087), its Representatives and assigns.

"Nominated Skipper" means the person nominated to be the skipper of the boat and who holds the required licences and qualifications, or such other person as consented to by the Manager in its absolute discretion.

"Price" means the applicable rate, best available rate, child rate or any other prices published for the reservation of the Accommodation, Equipment and or the Activities.

"Representatives" means the agents, directors, officers, contractors, volunteers or employees of the Manager.

"Security Bond" means any additional amount payable to the Manager by the Customer for any breakages, damages or excess cleaning or other charges incurred which may be retained by the Manager, at its absolute discretion.

"Waiver" means the Waiver, Release, Discharge and Indemnity published by the Manager as accepted by the Customer at the time of making the Booking.

3 Booking Policy

3.1 All Bookings are subject to availability.

3.2 The Manager reserves the right to decline any Bookings or requests at its absolute discretion.

3.3 Unless otherwise determined by the Manager prior to or at the time of Booking, the following provisions apply:

Accommodation:

(a) a 25% deposit is required at the time of Booking the Accommodation;

- (b) payment of the balance of the Booking Total is required 28 days prior to arrival;
- (c) if the Booking is made within 28 days of the arrival date, full payment of the Booking Total is required at the time of Booking;
- (d) a final list identifying all Guests staying in the Accommodation is to be provided by the Customer a minimum of 14 days prior to arrival;
- (e) a minimum stay of 2 nights will apply to all Bookings, except for Bookings made during school holidays (excluding summer school holidays), public holidays, long weekends and Easter dates applicable in Western Australia where a minimum stay of 3 nights will apply;

Equipment:

- (f) full payment of the Booking Total is required at the time of Booking;

Activities:

- (g) full payment of the Booking Total is required at the time of Booking;

Specials / Packages:

- (h) for packages, deals and special offers, payment of the Booking Total is required in accordance with the relevant terms and conditions published at the time of Booking.

3.4 A valid credit card is required at the time of Booking to guarantee your reservation. Your credit card will be held as security for your Booking and utilised for any Security Bond, applicable deposits, payments, outstanding charges, cancellation fees, no-show fees, damage and any breach of these T&C.

3.5 The Manager reserves the right to request payment of a Security Bond by the Customer, at its absolute discretion.

3.6 Failure by the Customer to make payment as required in accordance with the T&C, or as otherwise requested by the Manager, may result in the Booking being cancelled and the Manager making available the Accommodation, Equipment and or the Activities, or any part thereof, to other persons to book.

3.7 Bank fees, credit card charges, Paypal fees, exchange rates and any other fees and charges

incurred by transferring money from the Customer to the Manager are the sole responsibility of the Customer, are payable by the Customer and are non-refundable.

3.8 If the Customer makes payment by way of credit card, the Customer warrants that the information provided to the Manager is true and complete, that the Customer is authorised to use the credit card to make payment and that the Customer's payment will be honoured by the credit card issuer. The Manager reserves the right to conduct various checks to validate the identity and integrity of the Customer's payment details, which may include undertaking a pre-authorisation process and or requesting additional information from the Customer to verify identity.

3.9 Any items or services not included in the Booking are the sole responsibility of the Customer and must be paid by the Customer. Any outstanding accounts will need to be paid and settled on departure from the Mackerel Islands.

3.10 The Manager reserves the right to request identification information and documentation, including government issued photographic identification, upon check-in.

4 Cancellation

4.1 All cancellations must be received in writing from the Customer to the Manager via email to 'bookings@mackerelislands.com.au' or via phone to '+61 (0)8 9184 6444'. It is the Customer's responsibility to contact the Manager to verify that the cancellation of the Booking request has been received.

4.2 The Customer is responsible to ensure flights, vehicle hire, travel insurance and any components booked outside the Mackerel Islands are cancelled by the Customer and the Customer will adhere to the cancellation policy of each individual supplier.

4.3 Subject to the T&C, for Accommodation, where the Customer cancels the Booking:

(a) 28 days or more prior to the arrival date, all monies paid by the Customer will be refunded to the Customer less an amount equivalent to 10% of the deposit which will be retained by the Manager; and

(b) less than 28 days prior to the arrival date (including no shows), all monies paid by the Customer will be forfeited to the

Manager.

4.4 For Guest curtailment and or early check-out, all monies paid by the Customer will be forfeited.

4.5 Subject to the T&C, if the Manager is required to cancel the Booking for any reason the Manager may, in its absolute discretion, offer the Customer a refund of a portion of or all monies paid to the Manager, offer a credit for a future or alternative booking, and or vary the Booking date, Accommodation type, Equipment or Activity type to allow the Accommodation, Equipment and or the Activities to be booked as varied. Credits are able to be redeemed on any products offered by the Manager, at the Manager's absolute discretion.

5 Prices

5.1 Prices are in AUD.

5.2 Prices, Accommodation, Equipment and Activities as shown on the website are subject to change. The Manager reserves the right to change this information without notice. Existing Bookings that have been paid in full, or for which a deposit has been paid, will retain the Price as per the Booking.

6 Accommodation, Restaurant and Bar, Facilities

6.1 Campfires are not permitted.

6.2 Smoking or vaping is not permitted inside any building, hallway, stairwell, balcony or other indoor or adjacent area.

6.3 All Accommodation, contents, fixtures and fittings is and remains the property of the Manager at all times.

6.4 The Customer shall not affix any fixture or make any renovation, alteration or addition to the Accommodation, without the prior consent of the Manager, and any alterations or modifications to Accommodation must be carried out by the Manager.

6.5 The Manager takes no responsibility for the suitability of the Accommodation for the Customer's specific requirements, and it is the Customer's responsibility to ensure that all Accommodation is suitable for the Customer's specific needs.

6.6 The Customer must notify the Manager immediately of any concern with the Accommodation.

6.7 Any damage to the Accommodation is the

Customer's liability and the Customer must take adequate precautions to prevent any damage from occurring. The Customer will be charged for any repairs required to damaged Accommodation.

6.8 The Manager shall not be liable for any loss or damages arising out of the overloading, misuse or abuse of the Accommodation by the Customer and the Customer agrees to keep the Manager indemnified in respect thereof.

6.9 The Customer warrants that the Accommodation will be returned to the Manager in the same condition as the Accommodation was hired.

6.10 The Customer must notify the Manager immediately of any loss or damage to the Accommodation.

6.11 The Manager will inspect the Accommodation after the Customer's use. Any defects, damage or state of uncleanliness shall be reported to the Customer.

6.12 The Customer will pay the cost of any damage to, cleaning or loss of the Accommodation (including any fixtures and fittings and contents therein), which occurred during the Booking period, and any reasonable expenses incurred by the Manager as a result of such damage, cleaning and or loss to be determined by the Manager at its absolute discretion.

6.13 The Manager reserves the right to use any Security Bond to cover the cost of any breakages, damage to, cleaning of or loss of the Accommodation, and any reasonable expenses incurred by the Manager as a result of such damage, cleaning and or loss.

6.14 The Customer acknowledges and agrees that any amounts payable in relation to any loss and damage (including cleaning) suffered by the Manager shall constitute liquidated damages that are immediately due and payable by the Customer to the Manager.

6.15 The Customer authorises the Manager to deduct monies from any Security Bond for any loss, damage, repairs or other expenses incurred during the Booking period.

7 Noise Levels

7.1 The Customer acknowledges that the Mackerel Islands are a public place and noise can adversely impact other patrons.

7.2 The Manager does not permit excessive noise at

the Mackerel Islands. The Customer acknowledges that the Customer will ensure that minimum noise is emitted and the peace and quiet of other patrons and the Mackerel Islands is not disturbed.

- 7.3 The Customer acknowledges that a continuous or repeated breach of this clause 7 shall constitute a 'material breach' for the purposes of clause 14.1.

8 Behaviour

- 8.1 The Manager has a zero-tolerance approach to any behaviour that puts Customer safety in danger, or creates an unsafe or unwelcome environment for Customer, the Manager and its Representatives. This includes but is not limited to bullying, harassment, abusive or otherwise unsafe or unwelcome conduct.

- 8.2 The Customer acknowledges that a breach of this clause shall constitute a 'material breach' for the purposes of clause 14.1.

9 Equipment

- 9.1 All Equipment is and remains the property of the Manager at all times.

- 9.2 The Customer shall not affix any fixture or make any renovation, alteration or addition to the Equipment, without the prior consent of the Manager, and any alterations or modifications to Equipment must be carried out by the Manager.

- 9.3 The Manager takes no responsibility for the suitability of the Equipment for the Customer's requirements.

- 9.4 The Customer must inspect the Equipment upon receipt and delivery and notify the Manager immediately of any concern the Customer has in relation to the Equipment.

- 9.5 By accepting delivery of the Equipment, the Customer agrees and acknowledges that the Equipment is:

- (a) in good clean condition;
- (b) in satisfactory working order;
- (c) fit for purpose; and
- (d) of the quality and specifications as hired.

- 9.6 Upon collection of the Equipment, the Customer is responsible for the Equipment and shall maintain the Equipment in good condition until

its return to the Manager.

- 9.7 The Customer warrants that the Equipment will be returned to the Manager in the same condition as the Equipment was hired.

- 9.8 The Customer agrees to pay a Security Bond (if required by the Manager at its absolute discretion) which will be returned to the Customer provided that the Equipment is returned on time and in accordance with these T&C.

- 9.9 The Manager reserves the right to use the Security Bond to cover the costs of any damage to or loss of the Equipment, or any of it, and any expenses incurred by the Manager as a result of such damage and or loss.

- 9.10 The Customer authorises the Manager to deduct monies from the Security Bond for any loss, damage, repairs or other expenses incurred between the delivery of the Equipment to the Customer and the return of the Equipment to the Manager.

- 9.11 The Customer must return all Equipment at the end of the hire period, or otherwise by demand. A continuing hire fee may be charged at the Manager's sole discretion for all Equipment not returned to the Manager at the end of the hire period until the Equipment has been returned. The Customer shall give appropriate notice to the Manager if any extension or termination of the hire is requested. Availability of extension of Equipment hire cannot be guaranteed. No refunds will be issued for the early return of Equipment on hire (extended or otherwise).

10 Activities

- 10.1 The Customer is required to arrive at least 15 minutes before the commencement of the Activity.

- 10.2 If the Customer does not arrive within 15 minutes of the commencement of the Activity, the Manager (or such other third party) has the right to commence the Activity in the Customer's absence or cancel the Activity. All monies paid by the Customer to the Manager will be forfeited.

11 Boat Hire

- 11.1 A boat can only be hired and controlled, at all times, by the Nominated Skipper.

- 11.2 The Nominated Skipper is responsible and liable for all occupants and their actions at all times and he or she is required to advise all occupants

- of the risks and dangers associated with the use and operation of the boat prior to boarding.
- 11.3 The Nominated Skipper is responsible for the safety of all persons on board.
- 11.4 The Nominated Skipper warrants that all persons on board the boat are competent swimmers. Where a person is not a competent swimmer or less than 10 years of age, the Nominated Skipper accepts responsibility for such persons.
- 11.5 The Nominated Skipper warrants that they have a current and valid driver's licence or alternative form of photo identification, and if required a recreational skipper's ticket.
- 11.6 The Customer shall not use the boat for any commercial activity without the consent of the Manager provided in writing.
- 11.7 The boat shall not be used for any illegal purpose such as carrying passengers or goods for hire or sublease.
- 11.8 At no time shall the Customer exceed the maximum persons onboard stated by the Manager.
- 11.9 The boat shall not be used to push, propel or tow another boat, barge or any other thing and also not to be tied to another boat without the consent of the Manager.
- 11.10 The Customer is not allowed to remove or disassemble any parts of the boat (especially the motor or batteries).
- 11.11 The Customer shall not leave the boat or any trailer unattended for any unreasonable length of time and shall be responsible for any losses suffered due to theft or other misadventure which cannot be recouped by the Manager under the provision of its insurance policy.
- 11.12 The Customer is aware that the Manager shall not be responsible for any fines incurred or any breaches of WA Roads and Maritime Services regulations in respect to the boat whilst it is under the control or custody of the Customer, or during the continuance of the term of the hire. All fines incurred whether they be Traffic, Department of Transport or Marines and Harbours or otherwise shall be paid by the Customer.
- 11.13 Operation of the boat is only permitted during daylight hours (from sunrise to sunset) unless otherwise expressly agreed by the Manager.
- 11.14 All Western Australian marine safety and licensing rules apply. The boat is to be used and navigated so as to comply with the requirements of WA Roads and Maritime Services.
- 11.15 The Customers agrees and warrants:
- (a) the Customer's nominated mobile phone will be left on and the Customer will be contactable at all times during the hire period and where the boat remains in the possession and or control of the Customer;
 - (b) the boat is not to be operated above the relevant speed limit;
 - (c) the boat is not to operate in non-smooth waters;
 - (d) the boat will only be operated on areas specified by the Manager;
 - (e) littering in the boat and disposing rubbish into the water is not allowed;
 - (f) an additional fee may apply if the Manager is required to rescue the Customer from shallow or similar water where the Customer requires rescue as a result of their own actions; and
 - (g) if the Customer is fishing or crabbing, all relevant persons will hold all relevant licences and qualifications, including at least one person on board having a Recreational Fishing from Boat Licence.
- 11.16 All passengers should only drink moderately and the Nominated Skipper should have a BAC less than 0.05 (0.05 g/ 100 ml) at all times.
- 11.17 Smoking or consumption of illegal drugs on the boat, the pen and on the whole premises is not allowed at any time. The use of e-cigarettes (electronic cigarettes) is also prohibited.
- 11.18 Weather forecast monitoring is the responsibility of the Customer to ensure safety of persons on board of the boat.
- 11.19 The Customer must not operate the boat in poor weather or sea/river conditions and must come back to the shore / jetty / pen as soon as possible or where such conditions are imminent. If these conditions are present before the hire proceeds a transfer of reservation will be granted to the Customer.
- 11.20 In the event of a boat breaking down or the onset of poor weather conditions, the Customer

shall notify the Manager to arrange for the immediate return of the boat. In no event shall the Manager be responsible for any consequential loss incurred by the Customer in returning the boat.

- 11.21 The Customer indemnifies the Manager from any loss or damages suffered as a result of the Customer's or the Nominated Skipper's breach of these T&C.

12 Moorings

12.1 The Manager makes no representations or warranties in relation to the boat moorings at the Mackerel Islands.

12.2 The Customer accepts all liability in relation to the use of any boat moorings.

12.3 The Customer acknowledges that the Customer:

- (a) has adequate public liability insurance for its vessel;
- (b) will undertake its own safety and other relevant checks prior to use of the moorings; and
- (c) will not leave the vessel on a mooring unless a competent operator is present within the limits of the Mackerel Islands.

12.4 A fee will be payable by the Customer for the use of the mooring, determined by the Manager at its absolute discretion.

13 Customer's Warranties

13.1 The Customer warrants that:

- (d) the Customer has and will comply with all applicable laws, including in relation to entry to and within Western Australia and COVID-19;
- (e) the Customer has and will comply with all lawful directions of the Manager, including in relation to COVID-19;
- (f) there are no legal restrictions preventing the Customer from agreeing to the T&C;
- (g) the T&C apply to the Booking only;
- (h) the Customer acknowledges that the Customer may be visiting places where the political, cultural and geographical attributes present certain risks, dangers and physical challenges greater than those present in their daily life and by

making a Booking the Customer acknowledges they have considered the potential risks, dangers and challenges, and expressly assumes those risks. The Customer is solely responsible for acquainting themselves with customs, weather conditions (including cyclones and other inclement weather), road conditions, physical challenges, accessibility and laws in effect at the Mackerel Islands;

- (i) the Customer acknowledges that the location of the Activities, natural hazards, environment, geography, flora and fauna of the Mackerel Islands may involve a significant amount of personal risk. The Customer hereby assumes all such risk and does hereby release the Manager from all claims and causes of action arising from any damages or injuries or death resulting from these inherent risks;
- (j) the Customer will cooperate with the Manager and provide it with information that is reasonably required and necessary as requested by the Manager from time to time, to enable the Manager to carry out the Booking and will comply with such requests in a timely manner; and
- (k) the information provided by the Customer is true, correct and complete.

14 Termination

14.1 The Manager may terminate the Booking if there has been a material breach of the T&C.

14.2 Any termination of the Booking in accordance with this provision will result in all monies paid by the Customer to the Manager being forfeited by the Customer and retained by the Manager.

14.3 The accrued rights, obligations and remedies of the Manager is not affected by the termination of the T&C.

15 Liability

15.1 In addition to this clause 15, the Customer acknowledges reading and accepting the Waiver.

15.2 To the fullest extent permitted by law, the Customer releases, waives, discharges and indemnifies the Manager and its Representatives from any and all claims and actions, which may be made by the Customer or any third party, or on the Customer's behalf and or any third party's behalf, for loss, in any way

arising out of or related to the Booking or the T&C, including but not limited to property loss or damage, bodily injury or death.

15.3 The Manager and its Representatives shall not in any event be liable for contingent, consequential, indirect, special, and punitive or any other similar damages, howsoever caused, for any damage, injury or loss, arising out of or in connection with the Booking or the T&C, whether arising under breach of contract, negligence (commission, omission or advice), statute or otherwise.

15.4 To the fullest extent permitted by law, the total liability of the Manager and its Representatives arising out of, or in connection with, the Booking or the T&C is limited to the total value of the Booking.

15.5 This clause 15:

- (a) applies notwithstanding that any such claim, action or loss may come about, either wholly or in part, due to the negligence of or breach of a contractual term by the Manager;
- (b) is intended to be as broad and inclusive as is permitted by law; and
- (c) does not exclude, restrict or modify the application of the *Competition and Consumer Act 2010* (Cth), as amended from time to time.

16 GST

16.1 Unless otherwise stated, all amounts payable by the Customer are inclusive of GST.

16.2 The Customer agrees to pay GST in respect of any goods or services that the Manager supplies to the Customer and or are supplied to the Customer on behalf of the Manager.

17 Costs of Recovery

17.1 Any expenses, costs or disbursements incurred by the Manager in recovering any monies payable by the Customer, including dishonoured cheques, debt collection agency fees, solicitor's costs and interest thereon shall be paid by the Customer on a full indemnity basis.

18 Insurance

18.1 The Customer must obtain comprehensive travel and medical insurance including but not limited to cover for medical expenses, evacuation charges, trip cancellation and force

majeure events.

19 Government Requirements / COVID-19

19.1 The Customer shall comply with all vaccination and or testing requirements and or directions by:

- (a) the Government (Federal or State);
- (b) Western Australian health authorities; or
- (c) the Manager,

in relation to COVID-19 (or any other disease or virus), for entry into Western Australia or to access the Mackerel Islands and or the tours or services.

19.2 Where the Customer:

- (a) is unable to meet any requirement (including where a Government or Western Australian health authority requirement is introduced subsequent to the Booking);
- (b) cancels the Booking; or
- (c) is unable to access the Mackerel Islands, as a result of a requirement referred to in clause 19.1 above, the Customer shall forfeit any and all monies paid to the Manager.

19.3 Where the Customer does not comply with any requirement referred to in clause 19.1 above, the Manager reserves the right to decline the Booking, cancel the Booking or refuse entry into the Mackerel Islands at the Manager's absolute discretion and at the Customer's cost.

20 Force Majeure Event

20.1 If any Force Majeure Event results in the Manager being prevented from, or delayed in, performing any of its obligations to the Customer:

- (a) then such a delay or prevention of performance shall not be deemed to be a breach of contract or any other obligation placed upon the Manager under these T&C;
- (b) no loss or damage shall be claimed by the Customer from the Manager by reason thereof; and
- (c) the Manager shall use its best endeavours to minimise and reduce any

period of suspension occasioned by any Force Majeure Event.

20.2 In the event of a Force Majeure Event, the Manager, in its absolute discretion, may cancel the whole or part of a Booking and evict and or vacate the Customer from the Mackerel Islands.

20.3 The Manager may, in its absolute discretion, offer the Customer a credit for a future booking, and or vary the Booking date, Accommodation type, Equipment or Activity type to allow the Accommodation, Equipment and or the Activities to be booked as varied. Credits are able to be redeemed on any products offered by the Manager, at the Manager's absolute discretion.

21 Personal Information

21.1 The Customer's personal information may be used by the Manager and may be disclosed to the Manager's Representatives, agents, service providers, suppliers or other third parties for any purpose associated with the Booking. Any use or disclosure of the Customer's personal information by the Manager will be in accordance with the *Privacy Act 1988* (Cth) and the Australian Privacy Principles as amended from time to time.

21.2 In the course of the Customer's Booking, photos or video may be taken by the Manager or representatives of the Manager. These images may be used in any promotional materials, website, all social media platforms (i.e. Instagram), etc., unless the Customer specifically requests in writing to the Manager to not use the Customer's image. Otherwise, the Manager is granted a perpetual, royalty-free, worldwide, irrevocable licence by the Customer to use such images for publicity and promotional purposes.

22 Relationship

22.1 The T&C are not intended to create a relationship between the parties of partnership, joint venture or employer-employee.

23 Assignment

23.1 The T&C are personal to the Customer and are not able to be assigned.

24 Updating

24.1 The Manager reserve the right to update and or alter the T&C at any time for future bookings. The T&C applicable to the Customer's Booking are those that are current at the time the

Booking is made.

25 Non Merger

25.1 The covenants, agreements and obligations contained herein will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

26 Severance

26.1 If any part of the T&C is wholly or partly invalid, unenforceable, illegal, void or voidable, the T&C must be construed as if that provision or part of a provision had been severed from the T&C and the parties remain bound by all of the provisions and part provisions remaining after severance.

27 Governing laws

27.1 The T&C are governed by and shall be construed in accordance with the laws of the State of Western Australia.

27.2 The parties irrevocably:

(a) submit to the exclusive jurisdiction of the Courts of Western Australia and the Courts competent to determine appeals from those Courts:

(i) for determination of any dispute claim or demand; or

(ii) with respect to any proceedings which may be brought at any time relating to these T&C,

(b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum.